

Supplemental Letter of Findings Number: 04-20120393
Use Tax
For Tax Year 2009

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ISSUE

I. Use Tax—Recreational Vehicle.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#).

Taxpayer protests the imposition of use tax on the purchase of a recreational vehicle.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer had purchased a recreational vehicle ("RV") in 2009 without paying sales tax in any state. The Department therefore issued a proposed assessment for use tax, penalty, and interest. Taxpayer protested the assessment and an administrative hearing was held. Letter of Findings ("LOF") 04-20120393 was issued denying the protest of use tax, primarily due to the lack of supporting documentation for Taxpayer's position, but sustaining Taxpayer's protest of negligence penalty. Taxpayer requested a rehearing and provided additional supporting documentation for the protest. The rehearing was granted and this Supplemental Letter of Findings ("SLOF") results. Further facts will be supplied as required.

I. Sales Tax—Recreational Vehicle.

Taxpayer protests the imposition of use tax on the purchase of an RV in 2009. Taxpayer states that the RV was purchased in another state and that the RV never entered Indiana and that Indiana use tax is therefore not due. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. The Department determined that Taxpayer purchased the RV in Florida in a retail transaction on January 24, 2009, but did not pay Florida sales tax on the purchase. The Department therefore issued proposed assessments for Indiana use tax.

At the administrative hearing, Taxpayer was informed that supporting documentation would be required. Taxpayer did submit some documentation but it did not establish that the RV stayed outside Indiana. The LOF therefore denied the protest.

As part of the request for rehearing, Taxpayer was able to provide documentation which does establish that the RV did not enter Indiana. Since the RV did not enter Indiana, Taxpayer did not store, use, or otherwise consume the RV in Indiana. Since these things did not happen, Indiana use tax is not due. Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained.

Posted: 06/26/2013 by Legislative Services Agency

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